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Stivers v. Idaho State Tax Com'n Appellant's Brief 2 Dckt. 40007

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IN THE COURT OF APPEALS OF THE STATE OF IDAHO

**JAMES W. STIVERS and
KAYLYNN A. STIVERS**

Plaintiffs/Appellants

vs.

**STATE OF IDAHO, COMMISSIONER
STATE TAX COMMISSION**

Defendant/Respondent

**Supreme Court Case No. 40007-2012
2013 Unpublished Opinion No. 471**

**APPELLANTS' SUPPORTING
BRIEF FOR REHEARING**

**APPELLANTS' SUPPORTING BRIEF FOR REHEARING
From the 2013 Opinion No. 471
Judge Lansing, Chief Judge Gutierrez and Judge Gratton**

Appealed from the District Court of the Second Judicial District
Of the State of Idaho, in and for the County of Latah

HONORABLE JEFF M. BRUDIE, DISTRICT JUDGE

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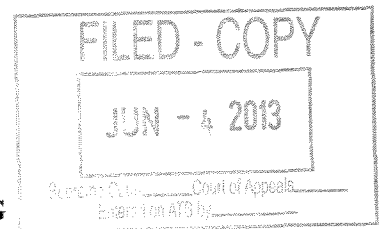


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I.

PROCEDURAL BACKGROUND

On January 7, 2013, the above entitled appeal was assigned to the Court of Appeals of the State of Idaho for disposition and thereafter, this appeal was submitted for decision on the briefs and without oral argument. On January 25, 2013, this Appellant, James W. Stivers, filed a Motion to Revoke Order of Assignment, pursuant of Appellate Rules, 114 and Rule 108, petitioning that the appeal be re-transferred to the Supreme Court for review and disposition because

- “(1) Appellants have invoked the original jurisdiction of the Idaho Supreme Court;
- “(2) Appellants believe their case involves ‘substantial public interest’;
- “(3) Their case involves a question of substantial or federal constitutional interpretation; and
- “(4) Their case raises a substantial question of law regarding the validity of a state statute.”

On February 15, 2013, an Order denying the motion was entered by the Clerk of the Court, Stephen W. Kenyon, with a reference number 13-65.

The entitled appeal was subsequently reviewed and an opinion entered April 30, 2013 by Judge Lansing, with Chief Judge Gutierrez and Judge Gratton concurring, in which the District Court’s dismissal was affirmed.

The Appellants have Petitioned for Rehearing and present this Brief in support thereof.

II.

INTERPRETIVE ANALYSIS OF OPINION

The Court of Appeals has chosen to follow the path of the district court as an administrative tribunal and not as a court fully endowed with the judicial power of the state:

“Because the Stivers did not provide the required security deposit, they were not entitled to appeal the redetermination of their tax deficiency to the BTA. Accordingly, the order dismissing the Stivers’ petition for judicial review of the BTA decision is affirmed.” (Opinion, page 7).

Evidently, because the Stivers appealed to the BTA – believing that the courts require all administrative appeals be exhausted before a case is “ripe” for judicial complaint – they forfeited their right to a trial *de novo* in district court:

“Therefore, we treat their complaint filed in the district court as a petition for judicial review of the BTA’s order dismissing the Stivers’ appeal.” (Footnote 2, pages 2-3).”

Otherwise, the Court believes the Stivers’ Complaint would constitute a “collateral attack” which is impermissible (Footnote 4, page 4), “holding [a] taxpayer could not collaterally attack constitutionality of tax obligations through independent tort action.”

Thus, the Court does not distinguish the notion of collateral attacks from the attempt by the Stivers to overcome the jurisdictional limitation imposed by statute and to appear before a court with competent jurisdiction. The Stivers are seeking judicial review but cannot obtain it because of statutory and administrative deficiencies. The Court believes that remedies for such deficiencies are not the role of the judiciary - the only time when the wisdom of the legislature is

tested on a case-by-case basis – but rather expects that the Stivers must spend their time and limited resources (now even further diminished by these alleged tax obligations) to organize a herculean effort for tax reform in the legislature. It must be assumed, then, that the courts regard misdeeds on the part the Tax Commission as something tolerable as long as 51% of the electorate chooses to do nothing about it.

The Stivers have appealed to principles of justice as embodied in common law and the respective constitutions under which we live. In contrast, this Court believes that expediency in the collection of taxes supersede the question of “rights” and principles of justice:

“The Commission’s decision to accept security that is “of a nature so reliable that the government will be able to collect on it without delay and without competition from other creditors” is certainly a legitimate governmental purpose and is rationally related to the governmental objective of securing the payment of taxes.” (page 7)

Yet, the Tax Commission has not demonstrated reasoning why this must be so in this case, and why the property bond would not secure the same objective. Rather, the Tax Commission has relied upon the Court as its apologist that there is no “constitutional infirmity” (page 7).

The Court asserts that “fees” are not distinguishable from “bonds,” citing several cases in which the waiving of court fees were denied to the indigent, and then applying those cases to apply to the issue of bond requirements (page 6). The Court does not consider that there is a substantial difference between the two. “Fees” are paid for services rendered, while “bonds” are guarantees of fidelity. Bonds are not intended to preemptively punish the accused (in criminal

cases), nor are they intended to preemptively collect taxes that are presumptively owed (tax cases being a branch of civil law).

The Court further asserts that the poor do not qualify as a protected class under the Fourteenth Amendment. We might assume that to be true, if, as is commonly supposed, “poor” means the inability to pay. The Stivers rely upon the Butcher’s Decision (Appellants’ Reply Brief, pages 16 & 22) to define “indigency” in its legal meaning as a person who labors in the common trades and who is not enriched by the labor of others. We have here, perhaps, the foundation for a body of law protecting “workers’ rights.” Usually, workers do not have ready access to cash from financial institutions to satisfy the belligerent claims of a tax commission. And in Idaho, a large class of unemployed workers has had to contrive various occupations of self-employment to financially survive. This is the class of vulnerable workers which the Tax Commission has targeted, while turning a blind eye toward the tax obligations of the corporations which fired them (Court Record pages 50-63, 73; Appellants’ Brief page 6; Appellants Reply Brief page 6). It can be demonstrated that they are a protected class under the Fourteenth Amendment and one to which the Stivers belong. However, it might be that the federal courts are a more appropriate venue to argue this point.

III.

SUPPORTING ARGUMENTS

During the course of the legal history of the United States, the legal distinction between artificial persons, such as corporations, and natural persons has become increasingly blurred. Biological persons who enjoy natural rights are presumed by our legal tradition to have been created by a supernatural deity in distinction from persons as legal fictions in law which are creatures of the state. That human beings are greater in value and dignity than corporations has not been questioned, the state itself being a creature of the collective action of natural persons.

However, over the course of time, a body of law has been created in which sometimes the liberties and rights exercised by natural persons have been conferred upon corporations, while at other times, conversely, the restrictions imposed upon corporations have been extended to apply to people. Thus, acts of privilege, which is the province of corporations, have become all muddled with the exercise of natural rights by people.

The Court supports its opinion by citing numerous cases which involve corporations and the exercise of privilege. Even in cases in which natural persons are litigants, as in the Tarbox case, there is an antecedent dependence upon legal precedent from the claims and controversies involving corporations.

Under such a system of law, the old economic realities of the family are fading away. No longer does the status of father and son confer an economic status. All we have now are dependents and members, stockholders and partners, employees and managers – classifications

derived from a state-sponsored collectivism which might be called: corporatism. The notion of personal sovereignty and its relevance to the life of family and community is little understood. Not knowing its boundaries and where the state might be destructive of those organic institutions, the Founders devised the Ninth Amendment as added protection:

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

Some jurists have asserted that the Ninth Amendment is relevant to interpretation of the Fourteenth Amendment. Justice Arthur Goldberg (joined by Chief Justice Earl Warren and Justice William Brennan) expressed this view in a concurring opinion in the case of Griswold v. Connecticut (1965):

“The Framers did not intend that the first eight amendments be construed to exhaust the basic and fundamental rights.... I do not mean to imply that the.... Ninth Amendment constitutes an independent source of rights protected from infringement by either the States or the Federal Government.... While the Ninth Amendment - and indeed the entire Bill of Rights - originally concerned restrictions upon federal power, the subsequently enacted Fourteenth Amendment prohibits the States as well from abridging fundamental personal liberties. And, the Ninth Amendment, in indicating that not all such liberties are specifically mentioned in the first eight amendments, is surely relevant in showing the existence of other fundamental personal rights, now protected from state, as well as federal, infringement. In sum, the Ninth Amendment simply lends strong support to the view that the "liberty" protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments. Cf. United Public Workers v. Mitchell, 330 U.S. 75, 94-95.”

And on the question of personal sovereignty, John Marshall’s opinion in McCulloch v. Maryland (1819) might well be worth considering here:

“That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in

conferring on one Government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied.”

And,

“1st. That a power to create implies a power to preserve; 2d. That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve; 3d. That, where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme.”

Marshall’s opinion, of course, directly discusses the purpose and role of corporations.

Their relation to sovereignty is our interest here. One sovereign cannot directly tax another. It would follow that there are things pertaining to the people, the creators of sovereignty, which likewise cannot be taxed. Taxing a man’s labor has been identified as one of those forbidden spheres:

“The right to follow any of the common occupations of life is an inalienable right”

And

“It has been well said that ‘the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property.’”

- Butcher’s Union Co. v. Crescent City Co., 111 U.S. 746 (1883)

If the so-called “income tax” has any validity at all, it cannot come from a superior sovereignty of the state over the person and his labor. It would seem to find its justification as an excise tax on the use of the nation’s currency.

It is theoretically possible, even in a popular government, that one class of powerful people can gain control of it and once having done so, use the taxing power to persecute and destroy its opposition. Can any student of history deny that this corrupt practice has happened in other nations? Perhaps in our own?

Even as these words are written, controversy surrounds the Internal Revenue Service and its selective enforcement of the tax laws to punish and defeat its opposition among those loosely called the “Tea Party.” In this case involving the Stivers, they claim it arose out of a dubious inquiry by the State Tax Commission against Mr. Stivers after he was publicly identified with this movement. They believe they can prove it through the discovery process (Court Record, page 73 and pages 59-63).

CONCLUSION

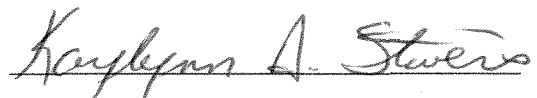
The Court of Appeals cites the U.S. Supreme Court to say that “appellate review is not a constitutional entitlement” and is “not required by due process” (Opinion, page 6). This may be true once the citizen has been heard before a court endowed with the judicial power of the state. If the courts are controlled and limited by statute, then the judiciary is not independent of the legislative branch and the citizen has been denied “a republican form of government.”

The Stivers have yet to have their case presented to a court endowed with competent jurisdiction. The district court does not claim this authority; nor apparently does the Court of Appeals. The Stivers have appealed to the Idaho Supreme Court as a court of original jurisdiction and request, that if no other remedy can be afforded to them, that the great writs of the common law be invoked to guarantee that their case be heard.

Respectfully submitted this 3rd day of June, 2013

A handwritten signature in cursive script, reading "James W. Stivers", written over a horizontal line.

James W. Stivers, Pro Se

A handwritten signature in cursive script, reading "Kaylynn A. Stivers", written over a horizontal line.

Kaylynn A. Stivers, Pro Se

Certificate of Service by Mail

I, James Stivers, certify that on this 3rd day of June, 2013, I served two copies of the foregoing APPELLANTS' SUPPORTING BRIEF FOR REHEARING by sending the same by certified mail with proof herein attached to:

Phil N. Skinner
Deputy Attorney General
PO Box 36
Boise, ID 83722

Attorney for the Idaho State Tax Commission



James Stivers, Appellant